

## **SETTLEMENT AGREEMENT**

### **I. PARTIES**

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice, and on behalf of the office of Inspector General ("HHS-OIG") of the United States Department of Health and Human Services ("HHS"); and the Pennsylvania Department of Public Welfare ("Pa. DPW") (hereinafter collectively the "Government"); Relator James Moczulski ("Relator"); and KidsPeace Corporation, on behalf of itself and KidsPeace National Centers, Inc. ("KPNC") and KidsPeace Hospital, Inc. ("KPH"), (hereinafter collectively "KidsPeace"). The United States, HHS-OIG, Pa. DPW, Relator, and KidsPeace Corporation are collectively referred to herein as "the Parties."

### **II. PREAMBLE**

As a preamble to this Agreement, the Parties agree to the following:

A. KidsPeace Corporation is a non profit corporation with its principal offices located at KidsPeace National Headquarters, 5300 KidsPeace Drive, Orefield, Pennsylvania 18069, in the Eastern District of Pennsylvania federal judicial district. KidsPeace Corporation has conducted mental health services in the form of partial hospitalization programs for the treatment of mental and emotional disorders in Medicaid patients in various jurisdictions, including many locations within the Commonwealth of Pennsylvania, including Bethlehem, Easton and Allentown.

Claims for reimbursement for these programs were submitted to the Medicaid program.

B. This Agreement addresses the Relator's civil claims against KidsPeace for the conduct of the Medicaid Afterschool Treatment Partial Hospitalization Programs (ATPHP) as alleged in the case of United States ex rel. James Moczulski v. KidsPeace Corporation, Inc., et al., Eastern District of Pennsylvania, Civil Action No. 02-1846 ("Civil Action"). This Agreement also addresses the Government's civil claims against KidsPeace for the conduct of the Medicaid Afterschool Treatment Partial Hospitalization Programs at Bethlehem, Easton and Allentown in Pennsylvania. The ATPHP, and all of KidsPeace's PHP services in Pennsylvania, are rendered exclusively through providers operated by KPNC and KPH. This Agreement also addresses the Covered Conduct as that term is defined herein in Paragraph II C.

C. The Medicaid partial hospitalization program is a non-residential treatment program for children and adults, including psychiatric, psychological, social and vocational elements under direct medical supervision. It is designed for patients with moderate to severe mental and/or emotional disorders. It is designed to increase the level of patient functioning. To be entitled for payment under the Medicaid partial hospitalization program, the partial hospitalization service must be: licensed by Pa. DPW; pursuant to a specific medical treatment plan; and with psychiatric and clinical staff as prescribed by regulation.

The Government and Relator contend that they have certain civil claims against KidsPeace under the False Claims Act, 31 U.S.C. §§ 3729-3733, and common law doctrines, relating to the operation of the Medicaid Afterschool Treatment Partial Hospitalization Programs from January 1996 to December 2002 in Pennsylvania (hereinafter the "Covered Conduct"), including the conduct alleged in the Civil Action and specifically the following alleged conduct:

(i) billing for patients in the partial hospitalization program who were not present at the PHP facility;

- (ii) billing for partial hospitalization program services of a recreational nature.

D. The Government also contends that it has certain administrative claims against KidsPeace under the provisions for set-offs and recoupments of overpayments under 42 U.S.C. § 1395gg, permissive exclusion from any Federal Health Care Program, 42 U.S.C. § 1320a-7(b), the provisions for civil penalties under the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and the provisions for civil monetary penalties under the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

E. KidsPeace denies the contentions of the Government and Relator as set forth in Paragraphs C and D, above, and in the Civil Action. More specifically, KidsPeace denies entirely and unequivocally the Relator's allegations referenced in II.C(i) and further disagrees that it billed for "recreational" services in its ATPHP programs that were not therapeutic services.

F. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

### **III. TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

1. KidsPeace agrees as of the effective date hereof to pay to the United States a total of One Million Eight Hundred Seventy-Six Thousand One Hundred and Seventy Dollars (\$1,876,170.00) (the "Settlement Amount"). The payment will be made in five annual installments of Three Hundred Seventy-Five Thousand Two Hundred Thirty-Five Dollars (\$375,235.00). The first payment shall be made within 30 days of the execution of this Agreement. The four additional annual installments will then be paid on or before April 1 of 2005, 2006, 2007 and 2008. KidsPeace will make all payments by electronic funds transfer pursuant to written instructions to be provided by the United States.

These payment amounts are based on: (i) an ability to pay analysis performed on KidsPeace; and (ii) based on the data and information provided by representatives of KidsPeace as to the financial status of the same.

Until all payments as specified above are made to the United States, KidsPeace further agrees that neither KPNC nor KPH will enter into any stand-alone transaction for the purchase or sale of assets in value in excess of Fifty Thousand Dollars (\$50,000.00) without first getting approval by the United States Department of Justice. These covenants shall end and terminate on the full payment of all sums due hereunder to the United States and the completion of the Corporate Integrity Agreement entered herein.

2. Subject to the exceptions in Paragraph 4 below, in consideration of the obligations of KidsPeace set forth in this Agreement, conditioned upon KidsPeace's payment in

full of all sums due hereunder, and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release KidsPeace Corporation and (i) its divisions, affiliates and subsidiaries, (ii) its predecessors, successors, assigns, and transferees, and (iii) its present and former officers and employees, from any civil or administrative monetary claims the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; Title XIX of the Social Security Act; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for payments made by the Medicaid program for the Covered Conduct as more fully described in paragraph II C above.

3. In consideration of the obligations of KidsPeace set forth in this Agreement, conditioned upon KidsPeace's payment in full of all sums due hereunder, and subject to Paragraph 15 below (concerning bankruptcy proceedings commenced within 91 days of the effective date of this Agreement), the HHS-OIG agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicaid or other federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against KidsPeace under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks and other prohibited activities), for the Covered Conduct as more fully described in paragraph II C above, except as reserved in Paragraph 4 below, and as reserved in this Paragraph. The HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude KidsPeace under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the HHS-OIG from taking

action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 4 below.

4. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following claims by the United States or its agencies or departments:

(1) Any civil, criminal or administrative claims arising under Title 26, U.S. Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct, as more fully described in Paragraph II C above. Additionally any liability to the United States (or its agencies) for any conduct under any federally funded health care program other than Medicaid;

(5) Any claims based upon such obligations as are created by this Agreement including, but not limited to those created by the Corporate Integrity Agreement referred to in paragraph 6 below;

(6) Any civil or administrative claims against any individuals, including current and former officers and employees, that are not based upon the Covered Conduct;

(7) Any civil or administrative claims against individuals, including current or former directors, officers, employees, agents or shareholders of KidsPeace Corporation who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted of an offense or who enter into a criminal plea agreement related to the Covered Conduct;

(8) Any claims submitted to the Medicare or Medicaid Programs by the Released Parties after December 2002.

5. KidsPeace waives and will not assert any defenses KidsPeace may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution or the holding or principles set forth in United States v. Halper, 490 U.S. 435 (1989) and Austin v. United States, 113 S.Ct. 2801 (1993), and agrees that the Settlement Amount is not punitive in nature or effect for purpose of such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

6. On or about this same date KidsPeace has entered into a Corporate Integrity Agreement with HHS-OIG as set forth in Attachment A, and incorporated herein by reference. KidsPeace shall begin implementation of the Corporate Integrity Agreement on the effective date.

7. The Settlement Amount that KidsPeace must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicaid carrier or intermediary related to the Covered Conduct; and KidsPeace agrees not to resubmit to any Medicare or Medicaid carrier or intermediary any previously denied claims related to the Covered Conduct arising under the partial hospitalization programs, and agrees not to appeal any such denials of claims.

8. KidsPeace agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395gg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of KidsPeace, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs":

(1) the matters covered by this Agreement;

(2) the United States, audit(s) and civil investigation(s) of the matters covered by this Agreement;

(3) KidsPeace's investigation, defense, and corrective actions undertaken in response to the United States' investigation and the Commonwealth of Pennsylvania's investigation in connection with the matters covered by this Agreement (including attorneys fees);

(4) the negotiation and performance of this Agreement;



(5) the payment KidsPeace makes to the United States pursuant to this Agreement, including any costs and attorneys fees; and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

(i) Retain an independent review organization to perform annual reviews as described in Section III of the CIA; and

(ii) prepare and submit reports to the HHS-OIG, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP).

Provided, however, that this Agreement shall not require KidsPeace to self-disallow otherwise allowable costs incurred in administering its ongoing compliance program in the ordinary course of business (and excluding the separate and additional costs incurred to supplement or enhance its existing compliance programs as a condition of the CIA).

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately determined and accounted for by KidsPeace and KidsPeace will not charge such unallowable costs directly or indirectly to any contracts with the United States or any State Medicaid Program, or seek payment for such unallowable costs through any cost report, cost statement, information statement, or payment request submitted by KidsPeace or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: KidsPeace further agrees that within 90 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in

this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by KidsPeace or any of its subsidiaries or affiliates, and will request, and agree, that such costs reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. KidsPeace agrees that the United States, at a minimum, will be entitled to recoup from KidsPeace any overpayment as a result of the prior inclusion of what have now been defined as unallowable costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by KidsPeace or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on KidsPeace or any of its subsidiaries, costs reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

9. This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity except as specifically provided in this Agreement.

10. In consideration of the mutual promises and obligations of this Agreement, and in consideration of a separate resolution by agreement or by Court determination of the issues between Relator and KidsPeace concerning Relator's attorney's fees and costs, Relator has released and discharged all Parties including the Government from any and all causes of action

as described herein. The Parties further agree that in consideration of the KidsPeace's payment in full of the Settlement Amount and agreement to abide by the terms of the Corporate Integrity agreement as referenced in paragraph 6 above, the Civil Action shall be dismissed with prejudice.

11. In consideration of the mutual promises and obligations of this Agreement, KidsPeace has released Relator from any and all causes of action, as described herein. Upon receipt of the electronic funds transfer as described in paragraph 1 above, the United States will pay to Relator and Relator's counsel jointly the Relator's share by electronic funds transfer. It is anticipated that Relator's share of each payment is Thirty Three Thousand Seven Hundred Seventy-One Dollars (\$33,771.00).

12. Relator agrees that this settlement is fair, adequate, and reasonable under all the circumstances, and will not challenge the Agreement pursuant to 31 U.S.C. § 3730 (c) (2) (B) .

13. KidsPeace agrees that it waives and will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries, or their parents, sponsors, legally responsible individuals or third-party payors. KidsPeace waives any causes of action against these beneficiaries, or their parents, sponsors, legally responsible individuals or third-party payors, based upon the claims for payment covered by this Agreement.

14. KidsPeace expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(A)(ii)(1), and fully expects to remain solvent following its payments to the United States hereunder. KidsPeace further expressly warrants that the financial data and information it has presented to the Government for purposes of the ability to pay analysis are complete and accurate to the best

of its knowledge. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to KidsPeace, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

15. In the event KidsPeace commences, or a third party commences, within 91 days of the effective date of this Agreement, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have any order for relief of KidsPeace's debts, or seeking to adjudicate KidsPeace or any of its affiliates as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for KidsPeace or for all or any substantial part of KidsPeace's assets, KidsPeace agrees as follows:

a. KidsPeace's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and KidsPeace will not argue or otherwise take the position in any such case, proceeding or action that: (i) KidsPeace's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) KidsPeace was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to KidsPeace.

b. In the event that KidsPeace's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action or proceeding against

KidsPeace or any defendant as named in the Complaint for the claims that would otherwise be covered by the releases provided in Paragraphs 2 and 3, above. If the United States chooses to do so, KidsPeace agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude KidsPeace from participation in the federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that KidsPeace will not argue or otherwise contend that the United States, claims, actions or proceedings are subject to an automatic stay; (ii) KidsPeace will not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within 180 calendar days of written notification to KidsPeace that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the effective date of this Agreement; and (iii) the United States has a valid claim against KidsPeace and the United States may pursue its claim, inter alia, in the case, action or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. KidsPeace acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement, with the exception of legal fees and costs incurred by Relator, which shall be paid by KidsPeace pursuant to a separate resolution by agreement between Relator and the KidsPeace or as ordered by a Court of competent jurisdiction.

17. KidsPeace and Relator represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

18. The Parties agree that this Agreement does not constitute an admission by any person or entity, and shall not be construed as an admission by any person or entity, with respect to any issue of law or fact. The Parties also agree that the performance under this Agreement of any of the obligations of KidsPeace, its affiliates, divisions, subsidiaries, their predecessors, successors, assigns, transferees, and any of their current or former directors, officers, employees or agents shall not constitute nor be construed as an admission by any person or entity, with respect to any issue of law or fact.

19. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA.

20. This Agreement and the CIA referenced in paragraph 6 above constitute the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties, except that only HHS-OIG and KidsPeace must agree in writing to amendments to the CIA.


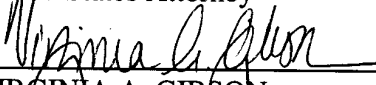

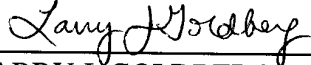
21. The undersigned individuals signing this Agreement on behalf of KidsPeace Corporation represent and warrant that they are authorized by KidsPeace Corporation to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

22. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

23. KidsPeace and Relator understand that this Agreement may be disclosed to the public and consents to the same.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

Dated: <u>May 4, 2004</u>	BY: <u></u> PATRICK L. MEEHAN United States Attorney
Dated: <u>May 6, 2004</u>	BY: <u></u> VIRGINIA A. GIBSON Assistant U.S. Attorney Chief, Civil Division
Dated: <u>May 6, 2004</u>	BY: <u></u> MARGARET L. HUTCHINSON Assistant U.S. Attorney Eastern District of Pennsylvania
Dated: <u>29 April 2004</u>	BY: <u></u> LARRY J. GOLDBERG Assistant Inspector General for Legal Affairs Office of Inspector General United States Department of Health and Human Services



KIDSPeACE CORPORATION

Dated: 4/20/4

BY: C.T. O'Donnell II  
C.T. O'DONNELL II  
President and Chief Executive Officer  
KidsPeace Corporation  
KidsPeace National Headquarters  
5300 KidsPeace Drive  
Orefield, PA 18069

Dated: 4/21/4

BY: Mark H. Gallant  
MARK H. GALLANT, Esquire  
Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103  
(215) 665-4136  
(215) 701-2436 (fax)

RELATOR

Dated: April 28, 2004

BY: James Moczulski  
JAMES MOCZULSKI, Relator

Dated: May 2, 2004

BY: Jeanne K. Damirgian  
JEANNE K. DAMIRGIAN, Esquire  
Counsel for Relator

DATED May 2, 2004

BY: Brian P. Kenney  
BRIAN P. KENNEY  
COUNSEL FOR RELATOR